

Polanco Act Update and Training



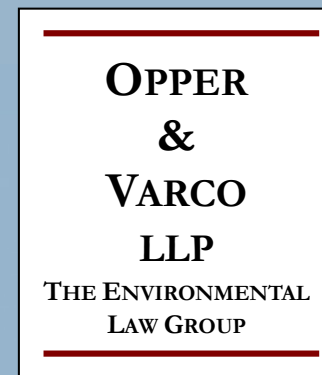
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Polanco Redevelopment Act



The Polanco Redevelopment Act helps facilitate redevelopment. The purpose of the Act is to:


- Assist public agencies in completing redevelopment projects.
- Provide for cost recovery from responsible parties.
- Provide immunity to public agencies and other interested parties from future state regulatory action for releases addressed during an investigation conducted in accordance with the Act.

When can Redevelopment Agencies use the Act?



- 1) Any project where there is contamination.
- 2) Agency does not have to own the property.
- 3) The Act can be used with eminent domain, but eminent domain is not required.
- 4) Agency can use the Act to recover costs or get immunities, or do both.

The first step: the 60 day notice letter.

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- Why did your client send a notice / receive a notice?
 - Why is the recipient a responsible party?
 - Current Owner/Operator
 - Former Owner/Operator
 - Arranger/Transporter
 - Anyone who “caused or contributed” to groundwater pollution
 - What is the redevelopment project?
 - What is the contamination at the property?

Responding to the 60 day notice



- Possible responses:
 - Request extension of time
 - Agency response will depend on schedule for property acquisition and project
 - Submitting a plan
 - Plan needs to accommodate the project and be acceptable to the agency.
 - Prior closure with contamination in place may not be sufficient if the project has a new use or excavation.
 - Plan must also accommodate the project schedule.

Responding to the 60 day notice




- Proposing a remediation agreement
 - Should the responsible party pay for or perform the remediation?
 - How much input should the Agency/RP have on the remediation plan?
 - What costs should be reimbursed?
 - Which regulatory agency should provide oversight?
 - Explicitly waiving the NCP.

The Regulatory Agency



- Per the Act, the Regulatory Agency can be:
 - DTSC or the RWQCB
 - An Agency designated as the lead agency under the Site Designation Process
 - A CUPA who has an agreement with the RWQCB for tank cases
 - In San Diego, County Counsel has requested letter go to RWQCB advising of interest to work with DEH under the Polanco Act.

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If you want to work with an agency other than the DTSC or the RWQCB, and it is not a tank case, you must submit an application to the Cal-EPA Site Designation Committee.

Process is governed by Cal. H&S Sec. 25260 et seq.

Site Designation Process usually takes 60 to 90 days depending on the hearing schedule. Plan this into the redevelopment schedule.

Meet with the Regulator



- Make the regulator part of the team early!
- Discuss the project and any critical issues before you write the plan.
- What type of oversight agreement is required?
- Who will pay the fees, and what fees should be invoiced?
- Plans and reports should clearly state that project is under the Polanco Act.

Polanco and the Regulator



It's a partnership

Engage the regulator early in the process

Educate the regulator

Immunity doesn't sound the same to the regulator as it does to you

Think of Polanco as a cleanup tool

Make it easy for the regulator to help you

Keep the goal in mind

Doing the Clean Up

**HOW CAN I HELP MY CLIENT SAVE MONEY?
BE CREATIVE!**

Combine investigation with remediation.

Reuse waste on site or off-site.

Do the remediation as part of the redevelopment.

Investigate possible treatment centers.

Help negotiate T&D rates.

Closure under the Polanco Act




- Closure Report should specifically ask for closure under the Polanco Act
- If Agency is lead agency under site designation, get Certificate of Completion
- If no site designation, Closure Letter should refer to Health & Safety Code Sec. 33459.3
- Myth: Clean up under Polanco is not more stringent than clean up under VAP!!

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HOW CAN I HELP MY CLIENT RECEIVE THE ACT'S IMMUNITIES?

1. An agency, developer or lender (not a responsible party) can receive state regulatory immunity from all releases addressed by the plan.
2. Design the plan to specify which releases / properties are treated in the plan. After implementing the plan, design the Closure Report to be clear that all matters / properties discussed in the plan have been addressed.
3. Seek a Closure Letter and “Certificate of Completion”.
4. This is still a good thing for RPs.

What happens if my client gets sued?



If the RP doesn't respond to the 60-day notice, the Agency can prepare its own remedial action plan and have it approved by an appropriate regulator.


Then the Agency can implement the plan, and sue the RP for costs incurred, attorneys' fees, interest, and staff time.

Cost recovery under the Act is:

- 1) the same "scope and standard" under CERCLA;
- 2) RPs are jointly and severally liable;
- 3) subject to strict liability;
- 4) liability is retroactive.

RP can also be sued for injunctive relief to do the clean up.

Why is the Polanco Redevelopment Act better than other statutes?

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- 1) Recovery of attorneys' fees;
 - 2) Statute applies to petroleum;
 - 3) Scope of clean up can be broader than environmental or common law statutes;
 - 4) Broader group of responsible parties;
 - 5) No NCP compliance;
 - 6) Injunctive relief;
 - 7) Get immunities at the end.

In the end, the goal is the project and the project needs a team.

- Redevelopment Agency
- Developer
- Regulatory Agency(ies) - (Regional Board, DTSC, County)
- Environmental Consultant
- Attorney
- Lenders
- Responsible Party?



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Questions and Comments

**SPEAK NOW OR FOREVER
HOLD YOUR PEACE!**

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